JS 44 (Rev. 12/12)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

**I. (a) PLAINTIFFS**
Abe Garfinkel

**DEFENDANTS**
Systweak, LLC, a Delaware Limited Liability Company

**(b)** County of Residence of First Listed Plaintiff    Montgomery
*(EXCEPT IN U.S. PLAINTIFF CASES)*

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*
NOTE:    IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
David S. Senoff, Esquire Caroselli Beachler McTiernan & Conboy
1845 Walnut Street, Fifteenth Floor, Philadelphia, PA 19103

Attorneys *(If Known)*

**II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

☐ 1   U.S. Government Plaintiff

☐ 3   Federal Question *(U.S. Government Not a Party)*

☐ 2   U.S. Government Defendant

☒ 4   Diversity *(Indicate Citizenship of Parties in Item III)*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** *(Place an "X" in One Box for Plaintiff*
*(For Diversity Cases Only)*    *and One Box for Defendant)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☒ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☒ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

| CONTRACT | TORTS | | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|---|---|
| ☐ 110 Insurance | **PERSONAL INJURY** | **PERSONAL INJURY** | ☐ 625 Drug Related Seizure | ☐ 422 Appeal 28 USC 158 | ☐ 375 False Claims Act |
| ☐ 120 Marine | ☐ 310 Airplane | ☐ 365 Personal Injury - | of Property 21 USC 881 | ☐ 423 Withdrawal | ☐ 400 State Reapportionment |
| ☐ 130 Miller Act | ☐ 315 Airplane Product | Product Liability | ☐ 690 Other | 28 USC 157 | ☐ 410 Antitrust |
| ☐ 140 Negotiable Instrument | Liability | ☐ 367 Health Care/ | | | ☐ 430 Banks and Banking |
| ☐ 150 Recovery of Overpayment | ☐ 320 Assault, Libel & | Pharmaceutical | | **PROPERTY RIGHTS** | ☐ 450 Commerce |
| & Enforcement of Judgment | Slander | Personal Injury | | ☐ 820 Copyrights | ☐ 460 Deportation |
| ☐ 151 Medicare Act | ☐ 330 Federal Employers' | Product Liability | | ☐ 830 Patent | ☐ 470 Racketeer Influenced and |
| ☐ 152 Recovery of Defaulted | Liability | ☐ 368 Asbestos Personal | | ☐ 840 Trademark | Corrupt Organizations |
| Student Loans | ☐ 340 Marine | Injury Product | | | ☐ 480 Consumer Credit |
| (Excludes Veterans) | ☐ 345 Marine Product | Liability | **LABOR** | **SOCIAL SECURITY** | ☐ 490 Cable/Sat TV |
| ☐ 153 Recovery of Overpayment | Liability | **PERSONAL PROPERTY** | ☐ 710 Fair Labor Standards | ☐ 861 HIA (1395ff) | ☐ 850 Securities/Commodities/ |
| of Veteran's Benefits | ☐ 350 Motor Vehicle | ☐ 370 Other Fraud | Act | ☐ 862 Black Lung (923) | Exchange |
| ☐ 160 Stockholders' Suits | ☐ 355 Motor Vehicle | ☐ 371 Truth in Lending | ☐ 720 Labor/Management | ☐ 863 DIWC/DIWW (405(g)) | ☐ 890 Other Statutory Actions |
| ☒ 190 Other Contract | Product Liability | ☐ 380 Other Personal | Relations | ☐ 864 SSID Title XVI | ☐ 891 Agricultural Acts |
| ☐ 195 Contract Product Liability | ☐ 360 Other Personal | Property Damage | ☐ 740 Railway Labor Act | ☐ 865 RSI (405(g)) | ☐ 893 Environmental Matters |
| ☐ 196 Franchise | Injury | ☐ 385 Property Damage | ☐ 751 Family and Medical | | ☐ 895 Freedom of Information |
| | ☐ 362 Personal Injury - | Product Liability | Leave Act | | Act |
| | Medical Malpractice | | ☐ 790 Other Labor Litigation | | ☐ 896 Arbitration |
| **REAL PROPERTY** | **CIVIL RIGHTS** | **PRISONER PETITIONS** | ☐ 791 Employee Retirement | **FEDERAL TAX SUITS** | ☐ 899 Administrative Procedure |
| ☐ 210 Land Condemnation | ☐ 440 Other Civil Rights | **Habeas Corpus:** | Income Security Act | ☐ 870 Taxes (U.S. Plaintiff | Act/Review or Appeal of |
| ☐ 220 Foreclosure | ☐ 441 Voting | ☐ 463 Alien Detainee | | or Defendant) | Agency Decision |
| ☐ 230 Rent Lease & Ejectment | ☐ 442 Employment | ☐ 510 Motions to Vacate | | ☐ 871 IRS—Third Party | ☐ 950 Constitutionality of |
| ☐ 240 Torts to Land | ☐ 443 Housing/ | Sentence | | 26 USC 7609 | State Statutes |
| ☐ 245 Tort Product Liability | Accommodations | ☐ 530 General | | | |
| ☐ 290 All Other Real Property | ☐ 445 Amer. w/Disabilities - | ☐ 535 Death Penalty | **IMMIGRATION** | | |
| | Employment | **Other:** | ☐ 462 Naturalization Application | | |
| | ☐ 446 Amer. w/Disabilities - | ☐ 540 Mandamus & Other | ☐ 465 Other Immigration | | |
| | Other | ☐ 550 Civil Rights | Actions | | |
| | ☐ 448 Education | ☐ 555 Prison Condition | | | |
| | | ☐ 560 Civil Detainee - | | | |
| | | Conditions of | | | |
| | | Confinement | | | |

**V. ORIGIN** *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District *(specify)*    ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC § 1332(d)(2)

Brief description of cause:
Unfair Trade Practice and Consumer Protection Law Action

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND:   ☒ Yes   ☐ No

**VIII. RELATED CASE(S) IF ANY**

*(See instructions):*    JUDGE _____    DOCKET NUMBER _____

DATE
03/07/2014

SIGNATURE OF ATTORNEY OF RECORD
*David S. Senoff*

**FOR OFFICE USE ONLY**

RECEIPT # _____   AMOUNT _____   APPLYING IFP _____   JUDGE _____   MAG. JUDGE _____

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 105 Spring Flower Court, Huntingdon Valley, PA 19006

Address of Defendant: 572 & 573, G-1, Tower B-1 Evolve, IT/ITeS Mahindra World City, Village Kalwara, Taluka

Place of Accident, Incident or Transaction: Sanganer, Jaipur, India 302037          Pennsylvania

*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))          Yes☐   No☐

Does this case involve multidistrict litigation possibilities?          Yes☐   No☒

*RELATED CASE, IF ANY:*

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

        Yes☐   No☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

        Yes☐   No☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

        Yes☐   No☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

        Yes☐   No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
    (Please specify) _____

B. *Diversity Jurisdiction Cases:*

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
    (Please specify) _____

## ARBITRATION CERTIFICATION

*(Check Appropriate Category)*

I, David S. Senoff, Esquire _____, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: March 7, 2014 _____          65278

        Attorney-at-Law          Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: March 7, 2014 _____          65278

        Attorney-at-Law          Attorney I.D.#

CIV. 609 (5/2012)

## IN THE UNITED STATES DISTRICT COURT
## FOR THE EASTERN DISTRICT OF PENNSYLVANIA

### CASE MANAGEMENT TRACK DESIGNATION FORM

| | |
|---|---|
| ABE GARFINKEL, Individually and on behalf of all others similarly situated<br>v.<br><br>SYSTWEAK, LLC, a Delaware Limited Liability Company | CIVIL ACTION<br><br>NO. |

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.)  In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255.                    ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health
    and Human Services denying plaintiff Social Security Benefits.                           ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2.   ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from
    exposure to asbestos.                                                                   ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are
    commonly referred to as complex and that need special or intense management by
    the court.  (See reverse side of this form for a detailed explanation of special
    management cases.)                                                                      ( X )

(f) Standard Management – Cases that do not fall into any one of the other tracks.           ( )


| March 7, 2014 | David S. Senoff | Plaintiff |
|---|---|---|
| **Date** | **Attorney-at-law** | **Attorney for** |
| 215-609-1350 | 215-609-1351 | dsenoff@cbmclaw.com |
| **Telephone** | **FAX Number** | **E-Mail Address** |

(Civ. 660) 10/02

## UNITED STATES DISTRICT COURT

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 105 Spring Flower Court, Huntingdon Valley, PA 19006

Address of Defendant: 572 & 573, G-1, Tower B-1 Evolve, IT/ITeS Mahindra World City, Village Kalwara, Taluka

Place of Accident, Incident or Transaction: Sanganer, Jaipur, India 302037                    Pennsylvania

*(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))          Yes☐   No☐

Does this case involve multidistrict litigation possibilities?          Yes☐   No☒

*RELATED CASE, IF ANY:*

Case Number: _____  Judge _____  Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

   Yes☐   No☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

   Yes☐   No☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

   Yes☐   No☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

   Yes☐   No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
    (Please specify) _____

B. *Diversity Jurisdiction Cases:*

1. ☒ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
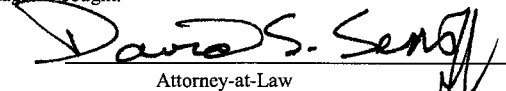9. ☐ All other Diversity Cases
   (Please specify) _____

## ARBITRATION CERTIFICATION
*(Check Appropriate Category)*

I, David S. Senoff, Esquire _____, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: March 7, 2014 _____          65278
                    Attorney-at-Law                  Attorney I.D.#

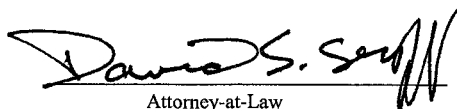**NOTE:** A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: March 7, 2014 _____          65278
                    Attorney-at-Law                  Attorney I.D.#

CIV. 609 (5/2012)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | |
|---|---|
| ABE GARFINKEL, individually and on behalf of all others similarly situated, | Case No. |
| | **CIVIL ACTION** |
| *Plaintiff,* | **CLASS ACTION** |
| *v.* | **JURY TRIAL DEMANDED** |
| SYSTWEAK LLC, a Delaware limited liability company, | |
| *Defendant.* | |

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Abe Garfinkel ("Plaintiff" or "Garfinkel") brings this Class Action Complaint and Demand for Jury Trial ("Complaint") against Defendant Systweak LLC ("Systweak") seeking relief for injuries that Systweak caused to him and a putative class of similarly situated individuals through the deceptive design, marketing, and sale of its Advanced Driver Updater software. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**NATURE OF THE ACTION**

1.      Systweak develops software that it claims will detect, update and repair outdated device drivers[1] on an individual's personal computer ("PC"). Unfortunately, and as described more fully herein, Systweak deceptively markets its Advanced Driver Updater software, which ultimately fails to deliver the level of utility advertised.

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[1]      As discussed more fully in Section III.A below, "device drivers" refer to the files and software that facilitate communications between hardware—physical or virtual—and the computer's operating system.

2.      Through its marketing materials and statements on its websites, Systweak says that Advanced Driver Updater scans for (and fixes) outdated drivers that cause PC problems and impair hardware performance. Systweak also boasts that using Advanced Driver Updater will increase computer speeds and stability, ensure "peak performance of installed hardware," and will otherwise "make your PC run with full efficiency."

3.      Contrary to Systweak's marketing (and reports generated by its software), Advanced Driver Updater isn't capable of performing legitimate assessment of device drivers. In reality, Systweak intentionally designed Advanced Driver Updater to invariably report drivers as out-of-date and impacting a computer's performance, without any credible bases for such claims.

4.      Systweak is a multi-national developer of computer utility software, and holds itself out as a reputable market leader. Because average consumers lack the requisite technical expertise to understand the functionality underlying Advanced Driver Updater, they trust that Systweak's software works as promised. Systweak betrayed that trust, and as a result, thousands of consumers have been (and continue to be) duped into buying its software.

**PARTIES**

5.      Plaintiff Abe Garfinkel is a natural person and resident of the State of Pennsylvania.

6.      Defendant Systweak LLC is a limited liability company organized in and existing under the laws of the State of Delaware with its headquarters located at 572 & 573, G-1, Tower B-1 Evolve, IT/ITeS Mahindra World City, Village Kalwara, Taluka Sanganer, Jaipur, India 302037. Systweak conducts business throughout the State of Pennsylvania, this District, and the United States.

## JURISDICTION AND VENUE

7.     This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because (a) at least one Class member is a citizen of a different state than Defendant, (b) the amount in controversy exceeds $5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

8.     This Court has personal jurisdiction over Systweak because it conducts significant business transactions in this District, solicits consumers in this District, and because the unlawful conduct alleged in the Complaint occurred in, was directed to, and/or emanated from this District.

9.     Venue is proper in this District under 28 U.S.C. § 1391 because Defendant conducts significant business transactions in this District, solicits consumers in this District, and because the improper conduct alleged in this Complaint occurred in, was directed to, and/or emanated from this District.

## FACTUAL BACKGROUND

### I.     An Overview of Systweak.

10.     Systweak develops a variety of so-called "utility software" products (*i.e.*, software designed to repair or enhance a computer's performance, security, or operations), which it claims will "make [PC users'] li[ves] simpler and easier...."[2] On its website, Systweak claims that its "wealth of experience developing innovative and user-friendly software" has led it to become "[o]ne of today's top IT solutions and services companies...."[3] One popular Systweak utility

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[2]     About Us, http://www.systweak.com/About-Company/AboutUs/ (last visited March 4, 2014).

[3]     Company, http://www.systweak.com/About-Company/ (last visited March 4, 2014).
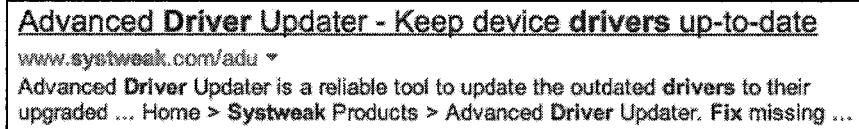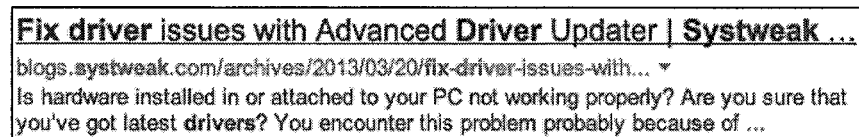
software product is Advanced Driver Updater.

11.     According to Systweak, Advanced Driver Updater has won "over 100 5-star awards"[4] because of its purported ability to "[b]oost . . . system[] performance" and "make PC[s] run with full efficiency"[5] and that, as a result, "[o]ver 10 million people have already chosen" it for their computers.[6]

**II.     Systweak Tricks Consumers into Purchasing Advanced Driver Updater by Uniformly Misrepresenting its Utility.**

12.     Systweak heavily promotes Advanced Driver Updater through online advertisements and on its website as software capable of fixing and updating Windows device drivers. For example, if a consumer searches the World Wide Web for software to fix or update drivers to repair their computer, they will likely encounter advertisements for Advanced Driver Updater substantially similar to those shown in the following Figures:



Advanced **Driver** Updater - Keep device **drivers** up-to-date
www.systweak.com/adu ▾
Advanced **Driver** Updater is a reliable tool to update the outdated **drivers** to their upgraded ... Home > **Systweak** Products > Advanced **Driver** Updater. Fix missing ...

(**Fig. 1.**)



**Fix driver** issues with Advanced **Driver** Updater | **Systweak** ...
blogs.systweak.com/archives/2013/03/20/fix-driver-issues-with... ▾
Is hardware installed in or attached to your PC not working properly? Are you sure that you've got latest **drivers**? You encounter this problem probably because of ...

(**Fig. 2.**)

13.     When a consumer clicks on an Advanced Driver Updater advertisement or hyperlink (such as those shown in Figures 1 and 2 on the previous page), they are directed to one

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[4]     Recommended Download by Vistaheads, http://systweak.com/adu/vistaheads/ (last visited March 4, 2014).

[5]     Advanced Driver Updater Features, http://www.systweak.com/ADU/Features/ (last visited March 4, 2014).

[6]     Act now!, http://www.systweak.com/adu/price.asp (last visited March 4, 2014).

of Systweak's websites where the company represents that the software will detect and update

outdated drivers to fix PC problems and ensure hardware stability. Specifically, Systweak's

websites represent that Advanced Driver Updater will perform the following functions:

- "detect and install the appropriate drivers for unknown devices";

- "minimize hardware conflicts, thereby improving system stability";

- "scan, display and install the most recent and updated drivers for you"; and

- "take care of errors such as BSODs by installing the latest device drivers".[7]

These and other similar statements are not only displayed on Systweak's website—

www.systweak.com—but also in the form of "banner" advertisements displayed when a

consumer searches the Internet for software to update or fix device drivers (substantially similar

to those shown in <u>Figures 1 and 2</u> on the previous page).

14.     Systweak's websites also describe the software's purported utility, and in

particular that Advanced Driver Updater has the following capabilities:

- "Scan, download and install the latest drivers for your system with a few simple clicks to enhance system performance";

- "Update outdated System Drivers";

- "Ensures peak performance of installed hardware";

- "Minimizes erratic behavior and enhances PC performance";

- "[M]inimize[s] hardware conflicts, thereby improving system stability";

- "[T]ake care of errors such as BSODs by installing the latest device drivers";

- Get [m]ore [s]peed"; and

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[7]     Advanced Driver Updater, http://www.systweak.com/ADU/ (last visited March 4, 2014).

- "[O]ptimize the functionality of your graphics card for the best gaming experience."[8]

15.     In addition to the above, explanations on Systweak's websites describe computer problems that could result from *not* updating device drivers. For instance, Systweak claims that:

- "Before installing Advanced Driver Updater" a user's computer "may perform slower or [c]rash frequently," but "[a]fter installing Advanced Driver Updater," the user's computer "perform[s] [f]aster and all [d]rivers are [u]p to date."; and

- "Most . . . drivers are installed along with the [computer's] operating system. However, with time, these existing drivers get outdated, resulting in poor system performance and limited hardware functionality. Therefore, it is very important to update the drivers on your system from time to time."

16.     Ultimately, Systweak claims that using Advanced Driver Updater will lead to "enhanced functionality, minimize[d] erratic behavior and improve[d] system performance."[9] But Systweak's statements about Advanced Driver Updater are unfounded. As explained below, Advanced Driver Updater doesn't use credible metrics to determine whether a driver is outdated, or to assess the impact that an outdated driver has on a computer's performance. Thus, the software cannot and does not actually detect, update, or fix outdated drivers as promised.

**III.     Advanced Driver Updater Does Not Function as Advertised and Cannot Perform the Level of Utility Claimed by Systweak.**

17.     To help understand why Advanced Driver Updater fails to perform the level of utility advertised by Systweak, a brief introduction to Microsoft Windows device drivers and how they operate follows below.

_____

[8]     *See* Advanced Driver Updater Overview, http://www.systweak.com/ADU/Overview/ (last visited March 4, 2014); Advanced Driver Updater Features, http://www.systweak.com/ADU/Features/ (last visited March 4, 2014).

[9]     Advanced Driver Updater Overview, http://www.systweak.com/ADU/Overview/ (last visited March 4, 2014).

### A.   *An introduction to Windows device drivers.*

18.     A computer system is organized as an integrated set of devices—including hardware like a printer, mouse and other peripherals—that cooperate with one another to perform functions for the user. For example, the keyboard and computer screen cooperate to display characters on the screen while the user types them. This cooperation among hardware—physical or virtual—is facilitated by software known as "device drivers," which serve as a platform for various devices to interact with software in a standardized manner. Device drivers allow for compatibility among software and hardware devices, regardless of an individual's specific hardware configuration. For example, the Microsoft Word software is compatible with a wide array of keyboards because it only needs to communicate with the Windows keyboard "device driver," which then translates the instructions to the keyboard (regardless of its make or model).

19.     The Windows operating system organizes device drivers internally into a hierarchical model known as a "device tree."[10] Individual hardware devices and their corresponding drivers are assigned particular branches of the device tree. Each branch correlates to an input/output mechanism called a "bus" (*i.e.*, the medium by which instructions are sent to the hardware device, like a keyboard), which is shared by groups of hardware devices.

20.     When a software application (*e.g.*, Microsoft Word) communicates with a hardware device (*e.g.*, the keyboard), the digital message is delivered through an input/output request packet ("IRP"). IRPs are routed through the device tree, where the messages are sorted and directed for receipt by the appropriate hardware device.

21.     It is a common misconception that a single driver controls any particular hardware device. The truth is that, because of the device tree's design, no one driver exclusively governs

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[10]     Mark E. Russinovich & David A. Solomon, Microsoft Windows Internals: Microsoft Windows Server 2003, Windows XP, and Windows 2000 (4th ed. 2005), pp. 596-99.

any piece of hardware—multiple drivers work in concert to accomplish hardware tasks. Thus, although Systweak claims that Advanced Driver Updater scans for and detects outdated device drivers for update and/or repair, it does not appear to, among other things, account for the relationships and interdependencies between the drivers required to perform any given function. Worse than this though, as shown below, the criteria used by Advanced Driver Updater to determine whether a driver is outdated and affecting system performance is wholly arbitrary.

> **B.**    ***An examination of Advanced Driver Updater's scanning engine shows that the software arbitrarily assesses the age of device drivers.***

22.    A closer look at Advanced Driver Updater's scanning engine reveals that the software uses unreliable metrics to determine the "age" of device drivers, and instead was designed to virtually always inform the user that device drivers are outdated.

23.    By way of illustration, <u>Figure 3</u> on the following page shows a screenshot of Advanced Driver Updater's scanning process, which is purportedly assessing the "age" of a computer's device drivers. While the scan appears to be credibly analyzing device drivers, an examination of the underlying technology reveals that the software doesn't transmit IRPs to device drivers. In other words, the software doesn't actually communicate with a computer's drivers to retrieve and assess information about the drivers themselves when determining their age or whether they need to be updated or repaired.
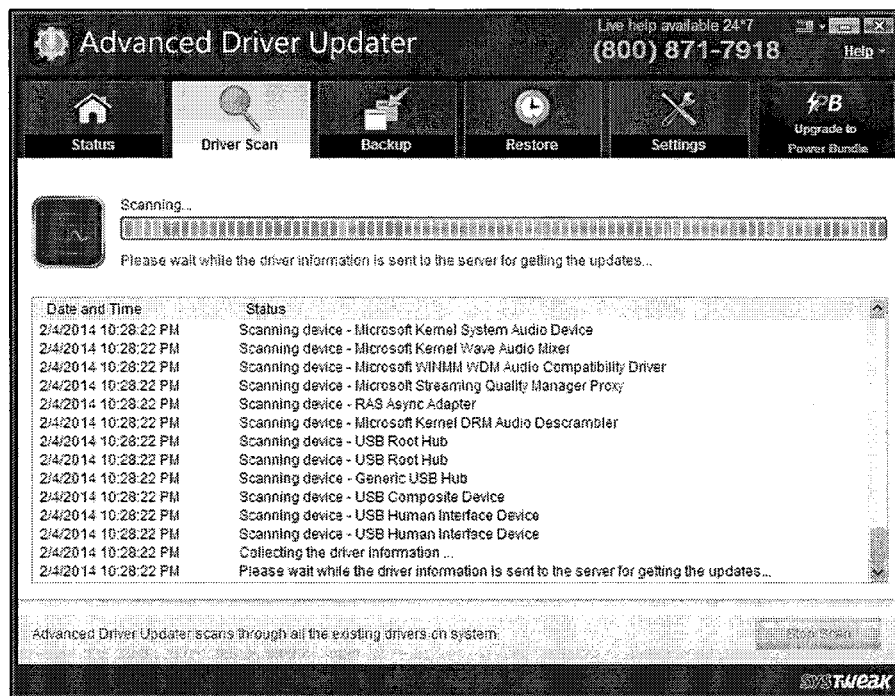
(**Fig. 3.**)

24. A closer review of the software shows that Advanced Driver Updater's method

for assessing the age of a driver relies on querying the date and version data in each driver's

installation file (in industry parlance, an "INF" file). INF files, however, cannot be relied upon to

provide accurate information about a driver's age because, according to Microsoft, the INF's

date only "specifies the date of the 'driver package'" and "must be the most recent date of any

file in the driver package."[11] Because a single INF file can govern the installation of several

drivers, oftentimes the driver package's date does not reflect the date of any particular driver.

25. More fundamentally, an INF file is intended to help "Windows . . . to install . . .

components for a device"—and therefore does not store up-to-date information about already

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[11] *See*, http://msdn.microsoft.com/en-
us/library/windows/hardware/ff547394%28v=vs.85%29.aspx (last accessed February 12, 2014);
*see also* http://msdn.microsoft.com/en-
us/library/windows/hardware/ff544840%28v=vs.85%29.aspx (A driver package "consists of all
the software components that you must supply in order for your device to be supported under
Windows," such as drivers and INF files) (last accessed February 12, 2014).

9

installed drivers. In addition, the standard system-supplied Windows drivers are often updated through Microsoft updates while their INF files remain intact. This means that although a Windows driver's INF file may indicate that its outdated, in reality the driver may be up-to-date.

26.     On a newly installed and updated Windows system, for example, INF files will often list Microsoft system-supplied device drivers as several years old. Thus Advanced Driver Updater, by default, reports certain drivers—like the standard Microsoft system-supplied keyboard drive—as "Ancient." *See* Figure 4 (showing a screenshot of Advanced Driver Updater's registration screen reporting the Microsoft system-supplied keyboard driver as "Ancient").
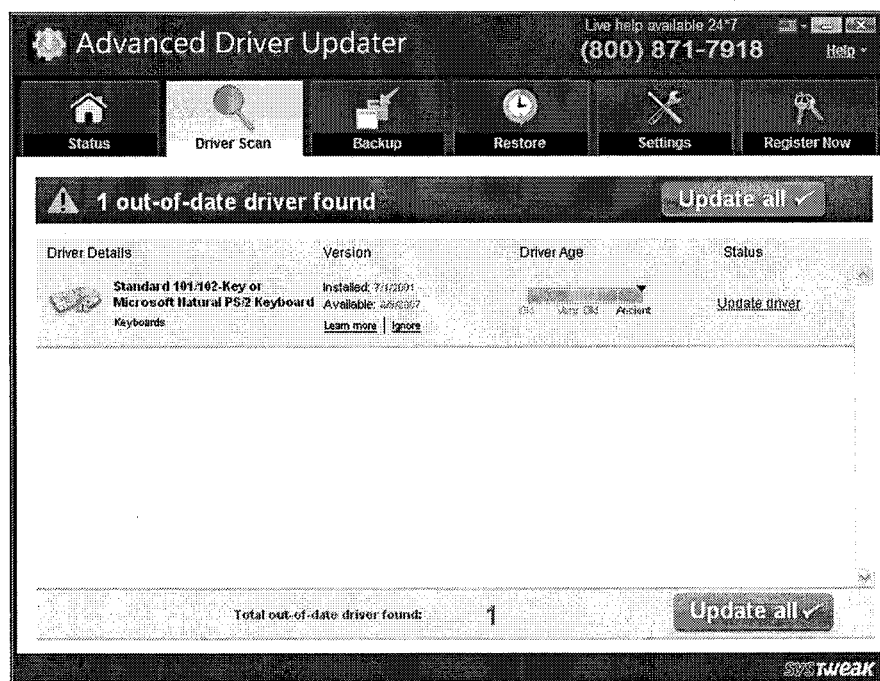


(**Fig. 4.**)

27.     What follows then is that even Advanced Driver Updater users with brand new installations of Microsoft Windows device drivers will likely be informed that their drivers are "Ancient."

28.     Studying Advanced Driver Updater's criteria for categorizing a device driver's

age as "Old," "Very Old," or "Ancient" also reveals that the software's algorithm is wholly arbitrary. For example, merely rolling back the date in a driver's INF file by *one day* (i.e., one day older than what Advanced Driver Updater deems up-to-date) causes the software to report that the driver is "Ancient." Thus, according to Advanced Driver Updater's algorithm, even a one-day-old driver is "Ancient."

29.    It can be reasonably concluded from the assessments above that Advanced Driver Updater doesn't credibly scan, detect, or analyze the age or status of device drivers. Instead, the software was designed to invariably report that drivers are "Ancient" and in need of repair to improve system performance. Using these techniques to create the appearance that Advanced Driver Updater functions as marketed (but not actually performing credible analyses and assessments of device drivers), Systweak has profited, and continues to profit, by selling a product that doesn't provide the level of advertised utility.

## IV.    Systweak's Problematic Design and Marketing of Advanced Driver Updater Follows the Same Pattern as Other Companies in the Utility Software Industry.

30.    An examination of the utility software industry as a whole shows that Systweak's decisions to use the sorts of fraudulent programmatic design and marketing practices described here are not unique. Indeed, companies in the industry have used similar techniques in selling other PC improvement utility software for nearly a decade. Recently, however, software developers—like Systweak and its competitors—have been called to account for this method of profiting off consumers unable to recognize the fraudulent technological design and methodologies underlying this type of supposed performance-enhancing software.

31.    Indeed, numerous lawsuits have been filed against well-known competitors of Systweak (*e.g.*, Symantec Corp., AVG Technologies, and Corel Corporation)—including several by Plaintiff's counsel here—which allege similar claims related to the fraudulent design and

marketing of so-called utility software products. Several of those cases have resulted in class-wide settlements and industry-shaping software modifications.

32.     Rather than follow suit and make the changes necessary to ensure that its software accurately detects and updates outdated drivers, Systweak continues to use its unlawful business practices to turn a profit.

## V.     Plaintiff Garfinkel's Experience Encountering and Purchasing Advanced Driver Updater.

33.     On or around November 22, 2013, Plaintiff Garfinkel searched the Internet for software that was capable of updating and repairing Windows device drivers and that could otherwise enhance the performance of his computer.

34.     One of Garfinkel's Google searches resulted in the display of an advertisement for Advanced Driver Updater—an ad substantially similar to those depicted in Figures 1–2. After clicking on the Advanced Driver Updater advertisement, Garfinkel was directed to Systweak's website (www.systweak.com) and recalls viewing its express warranties about the software's utility, which were the same as, or substantially similar to, the representations described in Paragraphs 11, 13, 14, and 16, and those shown below in Figures 5-10.



(Fig. 5.)

12
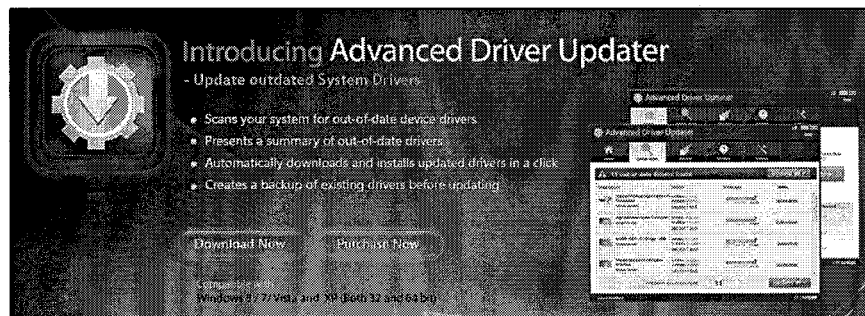
**Key Features & Benefits**

- Ensures peak performance of installed hardware
- Checks for updated drivers using an extensive database
- Installs genuine device drivers from original manufacturers
- Minimizes erratic behavior and enhances PC performance
- Downloads and installs most recent drivers with a few simple clicks
- Automatically scans system for latest drivers as per the schedule you set
- Full backup and restore functionality available in case of incompatibility issues
- Fully compatible with 32 bit and 64 bit versions of Windows XP, Vista and Windows 7

(**Fig. 6.**)

**What can Advanced Driver Updater do?**

1. Advanced Driver Updater can detect and install the appropriate drivers for unknown devices
2. Advanced Driver Updater can minimize hardware conflicts, thereby improving system stability
3. Advanced Driver Updater can scan, display and install the most recent and updated drivers for you
4. Advanced Driver Updater can create a backup of all device drivers prior to installing the latest ones
5. Advanced Driver Updater can revert the installation of bad drivers in case of compatibility issues
6. Advanced Driver Updater can take care of errors such as BSODs by installing the latest device drivers
7. Advanced Driver Updater can optimize the functionality of your graphics card for the best gaming experience

(**Fig. 7.**)

**Award-winning Advanced Driver Updater**

- ✓ Scans your system for out-of-date device drivers
- ✓ Presents a summary of out-of-date drivers
- ✓ Automatically downloads and installs updated drivers in a click
- ✓ Creates a backup of existing drivers before updating
- ✓ Fully compatible with Windows XP, Vista and Windows 7 (32 bit and 64 bit versions)

(**Fig. 8.**)

✓ Update outdated drivers

Scan, download and install the latest drivers for your system with a few simple clicks to enhance system performance.

(**Fig. 9.**)



Find out, how outdated are you PC's drives?
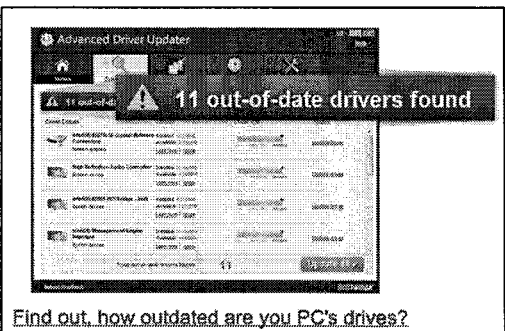
(**Fig. 10.**)

35.     Relying upon Systweak's representations—namely, that Advanced Driver Updater would "[u]pdate outdated drivers" on his computer, give him "enhanced functionality, minimize erratic behavior and improve system performance", "[e]nsure[] peak performance of installed hardware", and otherwise perform the tasks listed in Paragraphs 11, 13, 14, and 16 and depicted in Figures 5–10—Garfinkel purchased the software for $29.95.

36.     Contrary to these representations, and as described more fully in Section III above, Advanced Driver Updater was incapable of providing the level of utility described. As such, Garfinkel was misled into believing that Advanced Driver Updater was capable of honestly and accurately assessing the age and condition of a computer's device drivers, and that it was otherwise capable of improving a computer's performance.

37.     But for Systweak's representations, Garfinkel would not have purchased Systweak's Advanced Driver Updater software.

38.     To make matters worse, within days after purchasing Advanced Driver Updater, Garfinkel contacted Systweak customer support to request a refund for the software. Unfortunately, despite his repeated requests and Systweak's purported money back guarantee, Systweak refused to refund Garfinkel for the purchase of the software.

## CLASS ALLEGATIONS

39.     **Class Definition**: Plaintiff Abe Garfinkel bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of himself and a class of similarly situated individuals, defined as follows:

> All individuals and entities in the United States that have purchased Systweak's Advanced Driver Updater.

Excluded from the Class are (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling

interest and their current and former employees, officers, and directors, (2) the Judge or
Magistrate Judge to whom this case is assigned and the Judge's or Magistrate Judge's
immediate family, (3) persons who execute and file a timely request for exclusion, (4) persons
whose claims in this matter have been finally adjudicated on the merits or otherwise released,
and (5) the legal representatives, successors, or assigns of any such excluded person.

40.     **Numerosity:** The exact number of Class members is unknown to Plaintiff at this
time, but on information and belief, Systweak has sold its software to thousands of Class
members throughout the country, making joinder of each individual member impracticable.
Ultimately, the Class members will be easily identified through Systweak's records.

41.     **Commonality and Predominance:** Common questions of law and fact exist as to
all members of the Class and predominate over any questions affecting only individual members,
including:

   a)     whether Defendant intentionally marketed Advanced Driver Updater to
          deceive consumers into purchasing it;

   b)     whether Defendant intentionally misrepresented the functionality of the
          Advanced Driver Updater;

   c)     whether Defendant's conduct described herein constitutes a violation of
          the Pennsylvania Unfair Trade Practices and Consumer Protection Law,
          73 P.S. §§ 201-1, *et seq.*;

   d)     whether Defendant's conduct described herein constitutes fraudulent
          inducement;

   e)     whether Defendant's conduct described herein constitutes breach of
          contract; and

f)      whether Defendant has been unjustly enriched as a result of its conduct described herein.

42.      **Typicality**: Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the Class sustained damages as a result of Systweak's uniform wrongful conduct during transactions with Plaintiff and the Class.

43.      **Adequate Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Systweak has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to those of the other members of the Class.

44.      **Policies Generally Applicable to the Class**: This class action is also appropriate for certification because Systweak has acted or refused to act on grounds generally applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Systweak's policies challenged herein apply and affect members of the Class uniformly and Plaintiff's challenge of these policies hinges on Systweak's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff. Systweak has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class.

45.      **Superiority**: This class action is appropriate for certification because class

proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Systweak's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Systweak's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

46.     Plaintiff reserves the right to revise the foregoing "Class Allegations" and "Class Definition" based on facts learned in discovery.

## FIRST CAUSE OF ACTION
### Violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law
### 73 P.S. §§ 201-1, *et seq.*
### (On Behalf of Plaintiff and the Class)

47.     Plaintiff incorporates the foregoing allegations as if fully set forth herein.

48.     Systweak engaged in a deceptive and misleading course of conduct and advertising intended to deceive and significantly mislead consumers into purchasing its Advanced Driver Updater. This course of conduct constitutes unconscionable commercial practices, deception, fraud, false promises, false pretenses and/or misrepresentations in its interactions with Plaintiff and the Class, all of which is in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.* ("UTPCPL").

17

49.     Systweak is a "person" as defined by Section 201-2(2) of the UTPCPL.

50.     Systweak is/was engaged in "trade" and "commerce" as defined by Section 201-2(3) of the UTPCPL.

51.     As described herein, Systweak engaged in fraudulent and/or deceptive conduct that created the likelihood of confusion or misunderstanding, as defined the UTPCPL, by, *inter alia*: (i) publicly misrepresenting Advanced Driver Updater's functionality, including through false and misleading assertions like those listed in Paragraphs 11, 13, 14, and 16 and otherwise described in Section II of this Complaint; (ii) using its misrepresentations to induce consumers into purchasing Advanced Driver Updater; and (iii) selling a full version of the software that doesn't function as advertised. *See* 73 P.S. § 201-2(4)(xxi).

52.     Specifically, Systweak affirmatively represented to Plaintiff and the Class that Advanced Driver Updater would evaluate outdated drivers, and upgrade or repair them as shown by Systweak's statements in Paragraphs 11, 13, 14, and 16 and otherwise described in Section II above.

53.     Systweak's representations were, in fact, false. Advanced Driver Updater does not (and cannot) actually perform all of the benefits Systweak promises through its marketing materials.

54.     Furthermore, the *only reason* for consumers to purchase Advanced Driver Updater is to fix and/or update device drivers that are causing PC problems.

55.     Reasonable consumers are likely to be, and Plaintiff and the Class were, deceived by Systweak's misrepresentations about the full scope of benefits Advanced Driver Updater offers.

56.     Systweak's deceptive and misleading course of conduct occurred during the

18

marketing and sale of software products, and therefore occurred in the course of its business practices.

57.     Systweak's fraudulent and unfair conduct directly and proximately caused Plaintiff and the Class actual monetary damages in the form of the purchase price they paid for Advanced Driver Updater (typically $29.95).

58.     Accordingly, and pursuant to 73 P.S. § 201-9.2(a), Plaintiff, on behalf of himself and the Class, seeks: (i) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Systweak to cease the unlawful activities discussed herein; (ii) actual damages or statutory damages of $100, whichever is greater; and (iii) reasonable costs and attorneys' fees. Plaintiff further alleges that Systweak's conduct and misrepresentations were made with malice and in conscious disregard of Plaintiff's and the Class's rights, thereby entitling them to treble damages against Systweak pursuant to 73 P.S. § 201-9.2(a).

## SECOND CAUSE OF ACTION
### Fraudulent Inducement
### (On Behalf of Plaintiff and the Class)

59.     Plaintiff incorporates the foregoing allegations as if fully set forth herein.

60.     As depicted in Figures 1, 2, and 5-10, Paragraphs 11, 13, 14, and 16, and throughout all Counts of this Complaint, Systweak has used, and continues to use, marketing tactics it knows, or reasonably should know, are false and misleading.

61.     To induce Plaintiff and the Class into purchasing Advanced Driver Updater, Systweak affirmatively represented to Plaintiff and the Class that Advanced Driver Updater provides a certain level of utility. Specifically, Systweak represented that Advanced Driver Updater would legitimately assess Plaintiff's and the Class's computers' device drivers to determine whether they were outdated or in need of repair, as described above in Section II.

62.     Systweak's affirmative representations regarding Advanced Driver Updater were, in fact, false. In particular, Advanced Driver Updater fails to perform any credible assessment of the status of a PC's device drivers, their age, or the impact they have on a computer (if any).

63.     The utility of a consumer product is a material term of any transaction because it directly affects a consumer's choice of, or conduct regarding, whether to purchase a product. Any deception or fraud related to the utility of a product is materially misleading.

64.     As Advanced Driver Updater's developer, Systweak knew that its representations about Advanced Driver Updater's utility were false. Systweak intentionally designed its public representations to mislead consumers about Advanced Driver Updater's utility.

65.     Systweak intentionally made its misrepresentations to induce Plaintiff and the Class to rely on them by purchasing Advanced Driver Updater.

66.     Average consumers lack the requisite technical expertise to independently gauge Advanced Driver Updater's underlying functionality, and thus take Systweak's statements regarding its utility at face value. Plaintiff and the Class justifiably relied upon Systweak's misrepresentations by purchasing Advanced Driver Updater. They would not have purchased Advanced Driver Updater but for its misrepresentations.

67.     By using false and fraudulent marketing tactics (and exaggerated and fraudulent in-software representations), Systweak has engaged in fraudulent practices designed to mislead and deceive consumers into purchasing (and continuing to use) Advanced Driver Updater.

68.     As a result of their reasonable reliance on Systweak's misrepresentations, Plaintiff and the Class have been damaged in the amount of the difference between the purchase price they paid for Advanced Driver Updater (typically $29.95) and its true value, as reflected by the software's actual utility.

69.     Plaintiff therefore prays for relief in the amount of the difference between the purchase price he and the Class paid for Advanced Driver Updater and its actual value. Plaintiff further alleges that Systweak's conduct and misrepresentations were made with malice and in conscious disregard for Plaintiff's and the Class's rights, thereby entitling them to punitive damages against Systweak in an amount sufficient to deter such conduct in the future.

### THIRD CAUSE OF ACTION
#### Breach of Contract
#### (On Behalf of Plaintiff and the Class)

70.     Plaintiff incorporates the foregoing allegations as if fully alleged herein.

71.     Plaintiff and the members of the Class entered into agreements with Systweak whereby Systweak agreed to sell, and Plaintiff and the members of the Class agreed to purchase, Advanced Driver Updater, which would purportedly detect, update, and repair outdated device drivers, as described more fully in Section II above. Based on the foregoing offer and representations, Plaintiff and the Class agreed to purchase Advanced Driver Updater.

72.     Plaintiff and the Class paid, and Systweak accepted, Advanced Driver Updater's purchase price (typically $29.95), and therefore performed their obligations under the contracts.

73.     As such, Systweak voluntarily assumed a contractual obligation to provide Plaintiff and the Class with software that would perform the benefits contained in Paragraphs 11, 13, 14, and 16, and as otherwise described in Section II above, and that it would honestly assess and update or repair outdated device drivers.

74.     Systweak breached its contracts with Plaintiff and the Class by intentionally designing Advanced Driver Updater to mischaracterize and misrepresent the age of device drivers and further by failing to provide software that performed the tasks described in Paragraphs 11, 13, 14, and 16, and otherwise described in Section II above. These obligations

were material terms of the agreements.

75.     Systweak did not honor these obligations, as Advanced Driver Updater could not credibly assess Plaintiff's and the Class's device drivers. That is, Advanced Driver Updater did not actually perform the beneficial tasks that it represented it would.

76.     The aforementioned breaches of contract have directly and proximately caused Plaintiff and the Class economic injury and other damages, including in the form of the purchase price (or at least a portion thereof) of Advanced Driver Updater, because they purchased a product that does not perform as Systweak promised, and therefore lacks the utility contracted for.

**FOURTH CAUSE OF ACTION**
**Unjust Enrichment**
*In the alternative to Breach of Contract*
**(On behalf of Plaintiff and the Class)**

77.     Plaintiff incorporates the allegations in Paragraphs 1-69 as if fully set forth herein.

78.     If the Court finds Plaintiff's and the Class's contracts with Systweak invalid, non-existent, or otherwise unenforceable, Plaintiff and the members of the Class may be left without any adequate remedy at law.

79.     Plaintiff and the Class have conferred a benefit upon Systweak in the form of the money Systweak charged and collected from them for the purchase of the full version of the Advanced Driver Updater software, which did not and could not perform as Systweak promised.

80.     Systweak appreciates and/or has knowledge of the benefits conferred upon it by Plaintiff and the Class.

81.     Under principles of equity and good conscience, Systweak should not be permitted to retain the monies belonging to Plaintiff and the Class that it unjustly received as a result of its wrongful conduct described herein.

82.     Accordingly, Plaintiff, on behalf of himself and the other members of the Class, seeks restitution and disgorgement of all amounts by which Systweak has been unjustly enriched.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff Abe Garfinkel, on behalf of himself and the Class, respectfully requests that this Court issue an order:

A.     Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff Garfinkel as class representative, and appointing his counsel as class counsel;

B.     Declaring that Systweak's actions, as set out above, constitute (i) violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*; (ii) fraudulent inducement, (iii) breach of contract, and (iv) unjust enrichment (in the alternative to breach of contract);

C.     Awarding damages, including statutory and treble damages where applicable, to Plaintiff and the Class in an amount to be determined at trial;

D.     Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, *inter alia,* an order: (i) prohibiting Systweak from engaging in the wrongful and unlawful acts described herein, (ii) requiring Systweak to disclose and admit the wrongful and unlawful acts described herein, and (iii) requiring Systweak to fully disclose the true functional capability of Advanced Driver Updater in the future;

E.     Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F.     Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;

23

G.       Entering such other injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and

H.       Awarding such other and further relief as the Court deems reasonable and just.

## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

**ABE GARFINKEL**, individually and on behalf of all others similarly situated,

Dated: March 7   , 2014

By: _____
One of Plaintiff's Attorneys

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